

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1083 of 1983

with

FIRST APPEAL No 1084 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BJ MOMNA

Versus

JAMKUBEN VALJIBHAI

Appearance:

1. First Appeal No. 1083 of 1983
MR RAJNI H MEHTA for Petitioners
MR RAJESH D DAVE FOR MR SP DAVE for Respondents
No. 1, 2
2. First Appeal No 1084 of 1983
MR RAJNI H MEHTA for Petitioners
MR RAJESH D DAVE FOR MR SP DAVE for Respondents
No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

Date of decision: 19/09/96

ORAL JUDGEMENT (Per Patel, J.)

These two appeals arise out of a common judgment and award passed by the Motor Accident Claims Tribunal (Main), Junagadh in MACPs No. 139 of 1981 and 140 of 1981.

2. Briefly stated, the facts are as under :-

On the fateful date of 4th May 1981, deceased Parsottam was riding on a motor cycle along with his deceased wife Ranjanben and his sister Urmila, aged about 8 years. While they were travelling on the motorcycle from Keshod towards Veraval side, truck bearing registration No. GTW 1629 belonging to the opponent No. 1 came from the opposite direction, driven in a rash and negligent manner, and collided with the motor cycle as a result of which Parsottam and Ranjanben died on the spot and Urmila sustained injuries and great shock.

Mother-in-law of Ranjanben and her parents have filed MACP No. 139/81 in respect of death of Ranjanben while MACP No. 140/81 is filed by the mother of Parsottam and Urmila in respect of the death of Parsottam.

Deceased Parsottam was aged about 25 years and was doing tailoring work at a shop in the name and style of Gayatri Tailors at village Gadu. As per deposition of Jamkuben, mother of deceased Parsottam, the deceased was earning Rs.30/- per day. The Tribunal has concluded that for a skilled worker like a tailor, to earn Rs.20/- per day on an average, cannot be said to be a very high figure and the Tribunal has fixed the income of the deceased at Rs.600/- per month. The Tribunal thereafter concluded that the dependency loss to the claimants is Rs.400/- per month, and applying a multiplier of 15, the Tribunal has awarded a sum of Rs.72,000/- under the head of dependency loss insofar as MACP No. 140/81 is concerned.

So far as deceased Ranjanben is concerned, the Tribunal assessed the loss at Rs.1800/- per year and applying thereto a multiplier of 15, awarded a sum of Rs.27,000/-.

In both the claim petitions, apart from the above, the Tribunal has also awarded other amounts under the conventional heads.

3. Learned advocate for the Insurance Company submitted that the truck which is alleged to have been involved in the accident is not at all involved in the accident and at the relevant time, the truck was plying at a place far away from the accident site. To substantiate this contention, Mr. Mehta, learned advocate for the Insurance Company, drew our attention to the evidence of Keshav Mahadev, who, at the relevant time, was working as a Head Constable in S.R.P. Group No. II, and was in charge of maintaining a register at the check post showing movement of vehicles. According to this witness, the truck in question has been shown to have entered Dvi side from Una at 4.30 p.m. on that day and that it was empty; and the truck had returned at about 8.40 p.m. on the same date, loaded with dried fish.

4. In paragraphs 18 and 19 of the judgment, the Tribunal has given reasons for not accepting the register. The register is not an official book and has not been taken into consideration more particularly because there are no stamps of the Department, serial number of pages etc.

5. It is also required to be noted that the Investigating Officer has recorded the statement of the driver of the truck, which is produced at Exh. 37. Reading the same, it is clear that there was a collision of two vehicles and that opponent No. 2 had halted the truck after the incident slightly away from the spot. It is also clear that on realising that the persons travelling on the motor cycle are seriously injured, drove the truck to Malia Hatina, the place where the owner of the truck, opponent No.2, was residing. Reading the statement, it is clear that there is a reference of the motor cycle and in view of that, it can be said there is sufficient evidence to show that the truck in question is involved in the accident.

Apart from this, there is also evidence of one Noormahamad, Exh. 27.

6. The Tribunal has also considered the evidence of Urmila, who, at the relevant time, was a minor. She has stated that she could read only the numerical in the registration number and was unable to read the alphabets. Suffice it to say that her evidence also supports the version of the claimants.

7. Considering all the evidence as a whole, it cannot be said that the identity of the truck is even

doubtful. We are in agreement with the view taken by the Tribunal on the evidence on record. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

In the result, we dismiss both the appeals, with cost.
csm./